

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C 07-01819 CW

IN RE: STATIC RANDOM ACCESS (SRAM)
ANTITRUST LITIGATION,

ORDER GRANTING
PLAINTIFFS' MOTION
FOR CLASS
CERTIFICATION

Direct Purchaser Plaintiff moves for class certification pursuant to Rule 23 of the Federal Rules of Civil Procedure. Defendants¹ oppose the motion. The matter was heard on September

¹ Defendants are Renesas Technology Corp., Renesas Technology America, Inc., Hitachi, Ltd., Hitachi America, Ltd., Toshiba America, Inc., Toshiba America Corp., Toshiba Corp., Toshiba America Electronic Components, Inc., Etron Technology, Inc., Etron Technology America, Inc., Integrated Silicon Solution, Inc., Cypress Semiconductor, Inc., Cypress Semiconductor Corp., Hynix Semiconductor America, Inc., Hynix Semiconductor, Inc., Micron Technology, Inc., Micron Semiconductor Products, Inc., Mitsubishi Electric Corp., Mitsubishi Electric & Electronics USA, Inc., NEC Electronics America, Inc., NEC Electronics Corporation, Samsung Electronics Co. Ltd., Samsung Electronics America, Inc., Samsung Semiconductor, Inc., Winbond Electronics Corp., Winbond Electronics

(continued...)

1 19, 2008. Having considered oral argument and all of the papers
2 filed by the parties, the Court grants Plaintiff's motion.

3 BACKGROUND

4 The facts of this case were laid out in greater detail in the
5 Court's order on the initial motion to dismiss. In brief, Direct
6 Purchaser Plaintiff is a group of individuals and companies that
7 purchased Static Random Access Memory (SRAM) directly from one or
8 more Defendants. Defendants are various corporations that sold
9 SRAM to customers throughout the United States. As both Plaintiff
10 and Defendants acknowledge, there are at least two distinct types
11 of SRAM: "SRAM for computers (typically called fast or high power)
12 and SRAM for mobile phones and other hand-held devices that contain
13 a central processor (typically called slow or low power." Noll
14 Rep't. ¶ 55; see also Leonard Rep't ¶ 19-20.

15 Plaintiff alleges that between 1996 and 2005, Defendants
16 violated Section 1 of the Sherman Act by conspiring to fix and
17 maintain artificially high prices for SRAM. According to
18 Plaintiff, Defendants carried out this conspiracy through in-
19 person, telephone and email communications regarding pricing to
20 customers and market conditions.

21 The proposed class is defined as follows:

22 All persons and entities who, during the period
23 November 1, 1996 through December 31, 2005,

24 ¹(...continued)

25 Corp. America Inc., Alliance Semiconductor Corp., GSI Technology
26 Inc., Crucial Technology, Inc., Sony Corp., Sony Corp. of America,
27 Sony Electronic Inc., Fujitsu Ltd., Fujitsu America, Inc.,
28 Integrated Device Technology, Inc., Seiko Epson Corp., Epson
America, Inc., Epson Electronics America Inc., Sharp Corp., Sharp
Electronics Corp., STMicroelectronics N.V., STMicroelectronics,
Inc., Matsushita Electric Industrial Co., Ltd., and Semiconductor
Co.

1 purchased: (1) "fast" SRAM in the United States
2 directly from Defendants or any subsidiaries or
3 affiliates thereof; or, (2) "slow" SRAM in the
4 United States directly from Defendants or any
5 subsidiaries or affiliates thereof. Excluded from
the Class are Defendants, their parent companies,
subsidiaries and affiliates, any co-conspirators,
and all governmental entities.

6 Motion for Class Certification at 2-3.

7 LEGAL STANDARD

8 Plaintiffs seeking to represent a class must satisfy the
9 threshold requirements of Rule 23(a) as well as the requirements
10 for certification under one of the subsections of Rule 23(b). Rule
11 23(a) provides that a case is appropriate for certification as a
12 class action if: "(1) the class is so numerous that joinder of all
13 members is impracticable; (2) there are questions of law or fact
14 common to the class; (3) the claims or defenses of the
15 representative parties are typical of the claims or defenses of the
16 class; and (4) the representative parties will fairly and
17 adequately protect the interests of the class." Fed. R. Civ. P.
18 23(a). Rule 23(b) further provides that a case may be certified as
19 a class action only if one of the following is true:

20 (1) prosecuting separate actions by or against individual
class members would create a risk of:

21 (A) inconsistent or varying adjudications with
22 respect to individual class members that would
23 establish incompatible standards of conduct for the
party opposing the class; or

24 (B) adjudications with respect to individual class
25 members that, as a practical matter, would be
26 dispositive of the interests of the other members
not parties to the individual adjudications or would
substantially impair or impede their ability to
protect their interests;

27 (2) the party opposing the class has acted or refused to
28 act on grounds that apply generally to the class, so that
final injunctive relief or corresponding declaratory

1 relief is appropriate respecting the class as a whole; or

2 (3) the court finds that the questions of law or fact
3 common to class members predominate over any questions
4 affecting only individual members, and that a class
5 action is superior to other available methods for fairly
6 and efficiently adjudicating the controversy. The
7 matters pertinent to these findings include:

8 (A) the class members' interests in individually
9 controlling the prosecution or defense of separate
10 actions;

11 (B) the extent and nature of any litigation
12 concerning the controversy already begun by or
13 against class members;

14 (C) the desirability or undesirability of
15 concentrating the litigation of the claims in the
16 particular forum; and

17 (D) the likely difficulties in managing a class
18 action.

19 Fed. R. Civ. P. 23(b).

20 Plaintiffs seeking class certification bear the burden of
21 demonstrating that each element of Rule 23 is satisfied, and a
22 district court may certify a class only if it determines that
23 plaintiffs have borne their burden. General Tel. Co. v. Falcon,
24 457 U.S. 147, 158-61 (1982); Doninger v. Pac. Nw. Bell, Inc., 564
25 F.2d 1304, 1308 (9th Cir. 1977). In making this determination, the
26 court may not consider the merits of plaintiffs' claims.

27 Burkhalter Travel Agency v. MacFarms Int'l, Inc., 141 F.R.D. 144,
28 152 (N.D. Cal. 1991). Rather, the court must take the substantive
allegations of the complaint as true. Blackie v. Barrack, 524 F.2d
891, 901 (9th Cir. 1975). Nevertheless, the court need not accept
conclusory or generic allegations regarding the suitability of the
litigation for resolution through class action. Burkhalter, 141
F.R.D. at 152. In addition, the court may consider supplemental
evidentiary submissions of the parties. In re Methionine Antitrust

1 Litig., 204 F.R.D. 161, 163 (N.D. Cal. 2001); see also Moore v.
2 Hughes Helicopters, Inc., 708 F.2d 475, 480 (9th Cir. 1983) (noting
3 that "some inquiry into the substance of a case may be necessary to
4 ascertain satisfaction of the commonality and typicality
5 requirements of Rule 23(a)"; however, "it is improper to advance a
6 decision on the merits at the class certification stage").
7 Ultimately, it is in the district court's discretion whether a
8 class should be certified. Burkhalter, 141 F.R.D. at 152.

9 "Class actions play an important role in the private
10 enforcement of antitrust actions. For this reason courts resolve
11 doubts in these actions in favor of certifying the class." In re
12 Rubber Chemicals Antitrust Litig., 232 F.R.D. 346, 350 (N.D. Cal
13 2005).

14 DISCUSSION

15 As a preliminary matter, Defendants do not dispute Plaintiff's
16 assertion that this action satisfies the numerosity and commonality
17 requirements of Rule 23(a)(1) and (2), and the Court finds that it
18 does. See 1 Alba Cone & Herbert B. Newberg, Newberg on Class
19 Actions § 3.3 (4th ed. 2002) (where "the exact size of the class is
20 unknown, but general knowledge and common sense indicate that it is
21 large, the numerosity requirement is satisfied"); Hanlon v.
22 Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998) ("All questions
23 of fact and law need not be common to satisfy [Rule 23(a)(2)]. The
24 existence of shared legal issues with divergent factual predicates
25 is sufficient, as is a common core of salient facts coupled with
26 disparate legal remedies within the class.")

27 Defendants assert that class certification must fail because
28 (1) Plaintiff cannot meet the typicality requirement of Rule

1 23(a)(3); (2) Plaintiffs cannot protect the interests of all class
2 members as required by Rule 23(a)(4); and (3) Plaintiff cannot meet
3 the requirements of Rule 23(b). The Court addresses and rejects
4 each argument in turn.

5 I. Typicality

6 The typicality prerequisite of Rule 23(a) is fulfilled if "the
7 claims or defenses of the representative parties are typical of the
8 claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). The
9 test for typicality is "whether other members have the same or
10 similar injury, whether the action is based on conduct which is not
11 unique to the named plaintiffs, and whether other class members
12 have been injured by the same course of conduct." Hanon v.
13 Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992) (quoting
14 Schwartz v. Harp, 108 F.R.D. 279, 282 (C.D. Cal. 1985)). "Under
15 the rule's permissive standards, representative claims are
16 'typical' if they are reasonably co-extensive with those of absent
17 class members; they need not be substantially identical." Hanlon,
18 150 F.3d at 1020. "The typicality requirement does not mandate
19 that products purchased, methods of purchase, or even damages of
20 the named plaintiffs must be the same as those of the absent class
21 members." In re Vitamins Antitrust Litig., 209 F.R.D. 251, 261
22 (D.D.C. 2002).

23 Defendants assert that Plaintiff's claims are not typical
24 because named Plaintiff Westell only purchased fast SRAM and did
25 not purchase any slow SRAM. Defendants claim that fast and slow
26 SRAM exist in two separate markets; therefore, Plaintiff's claims
27 cannot be typical of the entire class. This argument has no merit.
28

1 Here, the overarching price fixing scheme is the linchpin of
2 Plaintiff's complaint, "regardless of the product purchased, the
3 market involved or the price ultimately paid." In re Flat Glass
4 Antitrust Litig., 191 F.R.D. 472, 480 (W.D. Pa 1999). Both the
5 fast and slow SRAM markets are alleged to be controlled by
6 Defendants' price-fixing conspiracy. Therefore, Plaintiff's
7 participation in one market and not the other does not negate
8 typicality in this case. Moreover, Plaintiff's claims are based on
9 the same legal theories that would be raised by absent class
10 members of both fast and slow SRAM purchasers. Thus, Rule
11 23(a)(3)'s typicality requirement is met.

12 II. Class Certification: Adequate Representation

13 Rule 23(a)(4) requires that "the representative parties will
14 fairly and adequately protect the interests of the class." Fed. R.
15 Civ. P. 23(a)(4). The adequacy requirement consists of two
16 inquiries: "(1) do the representative plaintiffs and their counsel
17 have any conflicts of interest with other class members, and (2)
18 will the representative plaintiffs and their counsel prosecute the
19 action vigorously on behalf of the class?" Staton v. Boeing Co.,
20 327 F.3d 938, 958 (9th Cir. 2003). Defendants challenge only the
21 first requirement of the rule.

22 The mere potential for a conflict of interest is not
23 sufficient to defeat class certification; the conflict must be
24 actual, not hypothetical. See Cummings v. Connell, 316 F.3d 886,
25 896 (9th Cir. 2003) ("[T]his circuit does not favor denial of class
26 certification on the basis of speculative conflicts."); Soc. Servs.
27 Union, Local 535 v. County of Santa Clara, 609 F.2d 944, 948 (9th
28 Cir. 1979) ("Mere speculation as to conflicts that may develop at

1 the remedy stage is insufficient to support denial of initial class
2 certification."); Blackie v. Barrack, 524 F.2d 891, 909 (9th Cir.
3 1975) (noting that class members might have differing interests at
4 later stages of litigation, but that "potential conflicts" do not
5 present a valid reason for refusing to certify a class).

6 Defendants argue that Plaintiff Westell, Inc. cannot fairly and
7 adequately protect the interests of the class because it is both a
8 direct and indirect purchaser of SRAM. It should be noted that the
9 instant class action certification motion concerns direct
10 purchasers whereas a separate class action filed in this Court
11 concerns indirect purchasers. Nevertheless, Defendants assert that
12 because a majority of Westell's purchases are indirect, it has a
13 greater interest in maximizing the putative Indirect Purchaser
14 class' recovery of what might be a limited amount of funds to
15 compensate all purchasers. This claim is speculative at best.

16 Westell is not a named plaintiff in the Indirect Purchaser's
17 class action complaint, and thus does not control that action. At
18 this point, Defendants have made no showing that there is a
19 likelihood of competing claims or that there is a conflict of
20 interest with other class members.

21 III. Class Certification: Predominance

22 Plaintiff asserts that this action falls under the ambit of
23 Rule 23(b) because common issues will predominate over any
24 individualized issues and because a class action is the superior
25 method of adjudicating this matter. "The Rule 23(b)(3)
26 predominance inquiry tests whether proposed classes are
27 sufficiently cohesive to warrant adjudication by representation."
28 Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 623 (1997). "When

1 common questions present a significant aspect of the case and they
2 can be resolved for all members of the class in a single
3 adjudication, there is clear justification for handling the dispute
4 on a representative rather than an individual basis." Hanlon, 150
5 F.3d at 1022 (internal quotation marks omitted).

6 To determine whether the predominance requirement is
7 satisfied, "courts must identify the issues involved in the case
8 and determine which are subject to 'generalized proof,' and which
9 must be the subject of individualized proof." In re Dynamic Random
10 Access Memory (DRAM) Antitrust Litig., 2006 WL 1530166, at *6 (N.D.
11 Cal.).

12 To obtain class certification in a Sherman Act § 1 claim,
13 Plaintiff must establish the predominance of common issues related
14 to three key elements: (1) whether there was a conspiracy to fix
15 prices in violation of the antitrust laws; (2) whether Plaintiff
16 sustained an antitrust injury, or the "impact" of Defendants'
17 unlawful activity; and (3) the amount of damages sustained as a
18 result of the antitrust violations.

19 A. Antitrust Violation Conspiracy

20 In price-fixing conspiracies, "courts have frequently found
21 this standard satisfied" because "proof of an alleged conspiracy
22 and defendants' acts in furtherance of such conspiracy require
23 common proof of defendants' conduct." DRAM, at 7; See In re Bulk
24 [Extruded] Graphit Prod. Antitrust Litig., 2006 WL 891362 at *9
25 (whether a conspiracy exists is a common question that predominates
26 over other issues in the case and "has the effect of satisfying the
27 first prerequisite of FRCP 23(b)(3).")

28 Plaintiff alleges that Defendants conspired to raise, fix,

1 maintain, and stabilize the price of SRAM through in-person,
2 telephone and email communications. This claim requires proof
3 common to all class members. Therefore, the Court finds that
4 common issues predominate as to the element of antitrust violation.

5 B. Antitrust Injury

6 To proceed with a class action, Plaintiff must be able to
7 establish, predominantly with generalized evidence, that all (or
8 nearly all) members of the class suffered damage as a result of
9 Defendants' alleged anti-competitive conduct. See DRAM at *7.

10 However, as the court in DRAM stated:

11 [D]uring the class certification stage, the court must
12 simply determine whether plaintiffs have made a
13 sufficient showing that the evidence they intend to
14 present concerning antitrust impact will be made using
15 generalized proof common to the class and that these
16 common issues will predominate. The court cannot weigh
17 in on the merits of plaintiffs' substantive arguments,
18 and must avoid engaging in a battle of expert testimony.
19 Plaintiffs need only advance a plausible methodology to
20 demonstrate that antitrust injury can be proven on a
21 class-wide basis.

22 Id. at *9 (citations and internal quotation marks omitted).

23 Here, through the expert report of Dr. Noll, Plaintiff has
24 advanced a plausible methodology that demonstrates that antitrust
25 injury can be proved on a class-wide basis. Determining an injury,
26 whether proven by a single plaintiff or numerous plaintiffs, involve
27 an analysis of the entire SRAM market. For instance, common
28 factors that an individual plaintiff or numerous plaintiffs would
need to address include: Defendants' market power (Noll Expert
Report (Noll) ¶ 35-37, Table 1); elasticity of demand (Noll at ¶
42); categories of direct purchasers (Noll ¶¶ 48-50, Exhibit 3);
the effect of purchasing contracts (Noll ¶¶ 44-47, Exhibit 1); and
actual prices charged.

1 Dr. Noll concluded that these common factors affect prices of
2 all standard SRAM products: "The evidence that is needed to show
3 that collusion was effective and thereby harmed consumers is common
4 to all members of the class." Noll ¶ 81. Defendants counter that
5 Dr. Noll's conclusions with respect to each of the common factors
6 is suspect. Yet, at this stage in the litigation, "we must avoid
7 engaging in a battle of the expert testimony." DRAM, at *9. Dr.
8 Noll's report supports Plaintiff's contention that an "antitrust
9 impact will be made using generalized proof common to the class and
10 that these common issues will predominate." Id. All of these
11 issues would need to be discussed to prove Defendants' ability to
12 fix prices effectively, and all of these issues would be similarly
13 presented in a case with one plaintiff or in a class action.

14 Defendants further challenge Dr. Noll's findings because they
15 are, in part, based on correlation analyses. Dr. Noll used
16 correlation analysis to test for common determinants of price and
17 to track price data against actual sales. As Defendants point out,
18 and Dr. Noll concedes, "the power of correlation analysis is low."
19 Noll ¶ 77. Defendants, through their own expert Dr. Leonard,
20 emphasize the weak statistical power of correlation tests. Leonard
21 Expert Report ¶¶ 107-114. Yet, similar correlation analyses and
22 market information have been upheld by numerous courts. In DRAM,
23 the court granted class certification to plaintiffs asserting
24 antitrust violations in the DRAM market. DRAM, at *11. The court
25 concluded that an expert's report grounded in analyses and
26 conclusions regarding DRAM market share estimates, contract
27 reviews, and correlations derived from price and sales data
28 supported plaintiffs' claims that the injury could be proved on a

1 class-wide basis. DRAM, at *8. See also In re Rubber Chem.
 2 Antitrust Litig., 232 F.R.D. 346, 353 (N.D. Cal. 2005) (upholding
 3 correlation analysis). Therefore, at this early stage in the
 4 litigation, the correlation analyses, combined with the analysis of
 5 the SRAM industry, suffice to establish a plausible methodology for
 6 proving an injury. Thus, the Court concludes that the predominance
 7 requirement has been satisfied with regard to the injury element of
 8 Plaintiff's claim.²

9 C. Damages

10 "Antitrust plaintiffs have a limited burden with respect to
 11 showing that individual damages issues do not predominate." In re
 12 Potash Antitrust Litig., 159 F.R.D. 682, 697 (D. Minn. 1995).
 13 Plaintiffs are not required to "supply a 'precise damage formula'
 14 at the certification stage of an antitrust action. Instead, in
 15 assessing whether to certify a class, the Court's inquiry is
 16 limited to whether or not the proposed methods are so insubstantial
 17 as to amount to no method at all." Id.

18 Plaintiff has proffered three methodologies for calculating
 19 damages on a class-wide basis: the first compares SRAM prices
 20 before and after the period of the price-fixing conspiracy (Noll
 21 ¶¶ 83-92); the second compares SRAM prices during the class period
 22 with prices for comparable products (Noll ¶¶ 93-95); and the third
 23 uses Defendants' cost data to estimate what competitive prices for
 24

25 ² Defendants also assert that analyzing the impact of
 26 customized SRAM would require an individualized analysis to prove
 27 an antitrust violation. Plaintiff concedes this point and asks the
 28 Court to exclude custom SRAM from the class. Plaintiff shall
 submit to Defendants a revised proposed class definition making
 this change, and then submit it to the Court by stipulation, or
 with a proposed alternate version from Defendants.

1 SRAM should have been (Noll ¶¶ 96-103). Plaintiff has proffered
2 methods for calculating aggregate damages for overcharges paid by
3 class members, based on average market prices. The validity of
4 those methods "will be adjudicated at trial based upon economic
5 theory, data sources, and statistical techniques that are entirely
6 common to the class." In re NASDAQ Market-Makers Antitrust Litig.,
7 169 F.R.D. 493, 521 (S.D.N.Y. 1996).

8 Defendants have not shown that the methods are "so
9 insubstantial as to amount to no method at all." Potash, 159
10 F.R.D. at 697. Therefore, the Court concludes that individual
11 issues do not predominate with respect to Plaintiff's proof of the
12 damages element of the antitrust conspiracy claim.

13 D. Superiority

14 Rule 23(b)(3) also requires that class resolution must be
15 "superior to other available methods for the fair and efficient
16 adjudication of the controversy." Fed. R. Civ. P. 23(b)(3). "The
17 policy at the very core of the class action mechanism is to
18 overcome the problem that small recoveries do not provide the
19 incentive for any individual to bring a solo action prosecuting his
20 or her rights." Amchem Prod., Inc. V. Windsor, 521 U.S. 591, 617
21 (1997). In antitrust cases such as this, the damages of individual
22 direct purchasers are likely to be too small to justify litigation,
23 but a class action would offer those with small claims the
24 opportunity for meaningful redress. A class action is the superior
25 method of resolving this controversy.

26 CONCLUSION

27 For the foregoing reasons, the Court GRANTS Plaintiff's motion
28 (Docket No. 437) for class certification. The Court also certifies

1 Westell, Inc. as Class Representative and appoints the Cotchett,
2 Pitre & McCarthy as lead counsel.³ Lead counsel for Plaintiff
3 shall prepare and submit within thirty days from the date of this
4 Order a proposed form of notice to be sent to members of the Class.
5 Defendants may file any comments to the notice within fifteen days
6 and Plaintiff may reply fifteen days after. Defendants shall
7 prepare and submit to the Court and to counsel for Plaintiff within
8 thirty days from the date of this Order a list of names and
9 addresses of all Class Members who can be identified with diligent
10 effort.

11 IT IS SO ORDERED.

12
13 Dated: 9/29/08



14 CLAUDIA WILKEN
15 United States District Judge
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27 _____
28 ³ In another order, Westell, Inc. is substituted as the real
party in interest for Westell Technologies, Inc.